

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 405 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

K.S. PATEL

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MR BP TANNA for Petitioner
MS BR GAJJAR, AGP for M/S PATEL ADVOCATES
for Respondent No. 1
MR KH BAXI for Respondent No. 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 19/04/2000

ORAL JUDGEMENT

I have heard Ms. Keerawala, learned counsel appearing on behalf of Mr. B.P.Tanna, learned Senior Counsel for the petitioner, Ms.B.R.Gajjar, learned Assistant Government appearing on behalf of M/s. Patel Advocates for the State -respondent No.1, and Mr. K.H.Baxi, learned counsel appearing on behalf of the

This writ petition has been filed by the petitioner seeking a direction the respondents to promote him in the post of Deputy Executive Engineer with effect from 23th July, 1987. Ms. Keerawala, learned counsel for the petitioner placed a copy of the office order dt. 30th September, 1991 issued by respondent no.2. From the said office order, it appears that the petitioner has been promoted to the post of Deputy Executive Engineer (Civil) on adhoc basis with effect from the date till he joins the post. Accordingly, after obtaining the office order dt. 30th September, 1991, the petitioner has joined in the post of Deputy Executive Engineer. It is submitted by Ms. Keerawala, learned counsel for the petitioner that by way of interim order passed by this court on 1st February, 1991, the respondents were directed to open the sealed cover in which a recommendation of Chief Administrative Officer, of Gujarat Water Supply & Sewerage Board was kept and in pursuance of the aforesaid interim order of this court, sealed cover was opened and the petitioner was promoted to the post of Deputy Executive Engineer. In the interim order, one of the conditions is that the promotion of the petitioner will also be subject to the final out come of Special Civil Application No.405 of 1988. The present special civil application has been filed by the petitioner himself. It is not disputed by learned counsel for the petitioner that no junior to the petitioner has been appointed earlier than the petitioner in the post of Deputy Executive Engineer. In the interim order, it has been specifically stated that if in the departmental inquiry, the petitioner is found to be guilty of the charges levelled against him, it will be open to the respondents to take appropriate action against him and mere fact that the petitioner is promoted to the post of Deputy Executive Engineer as a result of interim order, the same in any way will not debar the respondents from taking any action against the petitioner. Learned counsel for the petitioner is not in a position to say whether the departmental proceeding is completed or not. However, learned counsel for the petitioner submitted that since the promotion of the petitioner is subject to out come of the present writ petition i.e. Special Civil Application No. 405 of 1988, a direction is required to be issued as prayed for by the petitioner in the present petition. I do not agree with the submission made by the learned counsel appearing on behalf of the petitioner because as per interim order of this court dt. 1st February, 1991, the petitioner has already been promoted to the post of

Deputy Executive Engineer and therefore, at this stage, there is no scope in further directing the respondents to promote the petitioner again to the post of Deputy Executive Engineer (Civil). Therefore, I am of the view that the petition has become infructuous. However the learned counsel for the Board as well as learned Counsel for the petitioner submitted that as they are not in a position to say anything whether the disciplinary proceedings started against the petitioner has been completed or not. It is submitted by the learned counsel for the petitioner that the disciplinary proceeding has been started in the year 1986 by supplying copies of the chargesheet to the petitioner and from 1986, the matter might have been pending with the Government. Ms. Gajjar, Learned Assistant Government Pleader appearing on behalf of the State -respondent also could not enlighten to this court whether inquiry has been completed against the petitioner or not. Nor learned counsel for the Board could submit anything about the out come of the disciplinary proceeding started against the petitioner. However, since the petitioner has already been promoted to the post of Deputy Executive Engineer in pursuance of the interim order passed by this court, I am of the view that the present petition has become infructuous and no direction is required to be given to the respondents once again as prayed for by the petitioner in the present petition. However, if the departmental proceeding is still pending, the respondents are directed to complete the inquiry as early as possible and on the basis of the out come of the departmental inquiry, the authorities may take steps against the petitioner in accordance with law. Similar order had already been passed by this court by way of interim order dt. 1st February, 1991. Therefore, it is made clear that Condition No.5 of the Office Order dt. 30th September, 1991 passed by the Board may not have any force now and the respondent authorities may take appropriate steps on the basis of result of the inquiry conducted against the petitioner and his appointment will not be subject to the out come of Special Civil Application No.405 of 1988 which is accordingly disposed of as infructuous. The writ petition is disposed of as infructuous. Rule is discharged, but I make no order as to costs. Copy of the Office Order dt. 30th September, 1991 passed by the Board be kept on record.

Date: 19/4/2000. (P.K.SARKAR, J.)

ccshah